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AmeriCorps Guide to Frequently Asked Questions on the Americans with Disabilities Act (ADA)



Developed in partnership with the Indiana Institute
on Disability and Community and the
Office of Faith-Based and Community Initiatives

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**AmeriCorps Guide to
Frequently Asked Questions on the Americans
with Disabilities Act (ADA)**

Please note: the guidance provided in this guide is for information purposes only and should not be taken as legal advice. Legal issues are best addressed with an attorney familiar with disability law.

Q. Who is a “qualified individual with a disability”?

A. A qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position that s/he holds or seeks, and who can perform the “essential functions” of the position with or without reasonable accommodation. Requiring the ability to perform “essential” functions assures that an individual with a disability will not be considered unqualified simply because of his or her inability to perform marginal or incidental job functions.

Q. What are the essential functions of a job?

A. The ADA states that “consideration will be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a job description **before** advertising or interviewing for the job, this description shall be considered evidence of the essential functions of the job.”

References

Equal Employment Opportunity Commission, and U.S. Department of Justice Civil Rights Division. The Americans with Disabilities Act: Questions and Answers. August 2004. (pamphlet).

U.S. Department of Labor, "Disability Employment Policy." ODEP Frequently Asked Questions. 18 Dec. 2006. 13 Dec 2006.
<http://www.dol.gov/odep/categories/employment_supports/>.

Thank you for taking the time to inform yourself of this information. This form can and should be used for distribution purposes within your agency or organization.

If you have further questions, you may also contact Jessica Parks, VISTA Health and Diversity Associate, Office of Faith-Based and Community Initiatives, 302 W. Washington Street, Room E012, Indianapolis, IN 46204, T: 317-234-4031, F: 317-233-5663, JeParks@ofbci.IN.gov.

- The **Work Opportunity Tax Credit (WOTC)** benefits certain employers who hire certain targeted low-income groups, including Social Security Insurance recipients or certified vocational rehabilitation referrals.

Vocational Rehabilitation Services

The Bureau of Vocational Rehabilitation provides quality, individualized services **to enhance and support people with disabilities** to prepare for, obtain or retain employment. Through active participation in their rehabilitation, **people with disabilities achieve a greater level of independence** in their work place and living environments.

Vocational/Habilitation Options

Vocational Rehabilitation Services (VRS) - provides comprehensive, coordinated, effective, efficient and accountable services needed by qualified individuals with disabilities to prepare for, enter, engage in and retain employment consistent with each individual's strengths, resources, priorities, concerns, abilities, capabilities and informed choice.

A function may be essential because the reason the position exists is to perform that function (example: Switchboard Operator—it is essential that a person be able to answer and operate a phone since to answer and operate a phone is the reason the position exists).

A function may be essential because of the limited number of employees available among whom the performance of the function can be distributed (example: making deliveries outside of the office might be an essential function for a company with one secretary but a marginal function for a company with five secretaries). The function may be highly specialized so that the person is hired must possess that expertise or skill (example: a furniture manufacturer may have a position with the essential function of wood carving as a special skill).

Q. Does the ADA require employers to develop written job descriptions?

A. No. The ADA does not require employers to develop or maintain job descriptions. However, a written job description that is prepared before advertising or interviewing applicants for a job will be considered as evidence along with other relevant factors. Writing a great job description is a true friend of the employer when done correctly, as it helps to ensure legal interviewing techniques. If an employer uses job descriptions, they should be reviewed to make sure they accurately reflect the actual and essential functions of a job. A job description will be most helpful if it focuses on the

results or outcome of a job function, not solely on the way it customarily is performed. A reasonable accommodation may enable a person with a disability to accomplish a job function in a manner that is different from the way an employee who is not disabled may complete the same function.

Q. Does an employer have to give preference to a qualified applicant with a disability over other applicants?

A. No. An employer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to a disability. For example, suppose two persons apply for a job as a typist and an essential function of the job is to type 75 words per minute accurately. One applicant, an individual with a disability, who is provided with a reasonable accommodation for a typing test, types 78 words per minute; the other applicant who has no disability accurately types 99 words per minute. The employer can hire the applicant with the higher typing speed, since typing is needed for successful performance of the job.

Q. What is a “reasonable accommodation?”

A. Included as reasonable accommodations in the ADA are (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities (example: making the break room the employees use accessible to a new hire who uses a wheelchair); and (2) such things as

possible to establish with the School for the Blind, BOSMA, the School for the Deaf, ATTAIN, The Public Library, or the Disability Services departments of local colleges and universities to get materials translated into alternative formats.

The Office of Vocational Rehabilitation will sometimes help an organization that purchase materials in alternative formats, or buy adaptive equipment or services in order to assist a person with a disability in gaining or maintaining employment. They will do so **ONLY** for paid employment situations and will first want to discuss the “reasonableness” of their making the purchase rather than the employer.

Tax Benefits

Three tax incentives are available to help businesses offset the costs of accommodations and improve employment opportunities for employees with disabilities.

- The **Small Business Tax Credit** (IRS Code Section 44, Disabled Access Credit) can be used by certain small businesses for architectural changes, equipment or services such as sign language interpreters.
- The **Architectural/Transportation Tax Deduction** (IRS Code Section 190, Barrier Removal) can be used by businesses of any size to make architectural and transportation modifications.



Q. What are potential funding sources for organizations attempting to become more accessible?

A. All funding opportunities will take some research on part of the organization and/or individual. The Office of Disability Employment Policy has awarded competitive grants and contracts to further its mission to increase employment opportunities for adults and youth with disabilities. To date, ODEP has awarded more than \$61 million in grants and contracts. Solicitations for new grant proposals are published in the Federal Register and announced on the ODEP website. Another great source to find grants is at www.grants.gov. Here you are able to search out your particular interests.

Other possible sources of funding may be available (as funding permits) through state agencies such as the Governor's Council for People with Disabilities, or Indiana Protection and Advocacy Services (IPAS). These agencies have been known to cover registration fees as well as accommodation costs so that people with disabilities can fully participate in conferences and workshops. Collaborative agreements may be

job restructuring; modified work schedules; reassignment to a vacant position for which the employee is qualified; acquisition or modification of equipment or devices; appropriate adjustment or modification of examinations, training materials or policies; the provision of qualified readers or interpreters, etc. It is the responsibility of the employee to identify the need for an accommodation and not the employer's. Most accommodations cause no interruption to operations and half of all accommodations cost nothing. Of the accommodations that do cost money, 80% cost less than \$200 dollars. Given the case-by-case nature of the ADA, what is considered reasonable for one business may not be considered reasonable for another; among facilities in the same business, there can exist differences in expectation. The standard to be used is that of undue hardship.

Q. What does "undue hardship" mean and how do you apply the standard to determine the reasonableness of an accommodation?

A. Undue hardship means an action requires **significant difficulty and/or expense** when considered in light of the following factors: the **nature and cost** of the accommodation needed; the **overall financial resources of the facility involved**-- the number of persons employed at the facility, the effect on expenses and resources, or the impact otherwise of such an act upon the operation of the facility; **the overall financial resources of the covered entity**— the overall size

of the business of a covered entity in respect to the number of its employees, and the number, type and location of its facilities; and **the type of operation or operations of the covered entity** — including the composition, structure, and function of the workforce, the geographic separateness of the facility to its parent (covered) entity and its administrative relationship with that entity.

Q. When is an employer required to make a reasonable accommodation?

A. An employer is only required to accommodate a “known” disability of a qualified applicant or employee. The requirement generally will be prompted by a request from an individual with a disability, who frequently will be able to suggest an appropriate accommodation. Accommodations must be made on an individual basis, because the nature and extent of a disabling condition and the requirements of a job will vary in each case. If the individual does not request an accommodation, the employer is not required to provide one except where an individual’s known disability impairs his/her ability to know of, or effectively communicate a need for an accommodation that is obvious to the employer. If a person with a disability requests (but cannot suggest) an appropriate accommodation, the employer and the individual should work together to identify one. There are also many public and private resources that can provide assistance without cost.

- Have a microphone if it is a large room, for people with hearing impairments
- Cut down on all background noise for people with hearing impairments and those who use hearing aids
- If people who use wheelchairs are speaking, avoid using podiums. Have all speakers sit at a table instead.
- Is the speaker well positioned?

- Ask deaf participants and interpreters what positions within the room would be best to facilitate communication.
- Be sure one person speaks at a time if there is an interpreter present
- Have one person speak at a time in case an individual is lip reading or hearing impaired
- If an audience member with a question has difficulty speaking, wait calmly for him/her to finish (don't interrupt). If you do not understand, ask him/her to repeat the question. If you still do not understand, restate what you did understand and ask for more information.
- All important material that is written should be announced during the meeting
- Have the speaker located in a position where he or she is easy to see by everyone in the room. Do not have them located in front of windows as a background (this can be particularly problematic for people with Attention Deficit Disorder or visual impairments).

Your room:

- Have aisles wide enough to accommodate wheelchairs
- Tables high enough to accommodate wheelchairs
- Ramps for anyone with mobility impairments

Q. What are some of the additional key implication times and considerations to keep in mind when it comes to the ADA and employment?

A. Pre-interview

(1) It is key that all job seekers can access the application for employment and consideration must be given to barrier removal. This includes architectural barriers that would prevent a person from getting into a building and/or office area wherein applications are requested; policy or procedural barriers which would have the effect of screening out persons with disabilities from the hiring process, or barriers existing in the application itself such as questions that ask, "Have you been hospitalized in the past three years?" or "Have you ever filed a Worker's Compensation claim?"

(2) It is key that all pre-employment testing is applicable to the job, valid, and required uniformly. Also, reasonable accommodations must be provided to allow applicants equal access to successful testing (example: for a typing test, materials can be made available in large print OR someone can read the test aloud).

The Interview

(1) It is key that during the interview no inquiries are made as to whether the applicant is a person with a disability.

(2) If the person has a visible disability, no questions should be asked as to the nature or severity of such a disability.

(3) All questions should be limited to the applicant's ability to perform the essential functions of the job.

Making the job offer post-interview:

(1) It is key to make sure you have a clear process by which you arrived at the employment decision to NOT hire a qualified candidate with a disability (and that the decision is legally sound—NOT based on the person's disability).

(2) If you decide to hire a qualified candidate with a disability, and either the disability is obvious or has been disclosed by the job candidate, together with the candidate you can now begin to address the need for any reasonable accommodation.

Post-offer medical exams:

(1) It is key that medical exams only be required AFTER an offer of employment has been made and PRIOR to the start of work.

(2) Such exams must exist only to determine the applicant's ability to perform the essential functions of the job.

(3) They must also be required of all entering employees for the same job.

(4) Information obtained regarding the medical condition or history of any employee must be maintained in a separate medical file and treated as confidential.

- Please bring two copies of your slides/handouts in large print (20-point), sans-serif (i.e. Arial or Helvetica) with at least 1.25 spacing between lines
- Use 12-point font or larger for all other handouts; avoid color print/paper
- In designing overheads/PowerPoint slides, use at least 24-point font
- Try to use pictures and graphics as well as words to deliver your message

To appeal to the various learning styles and preferences,

- Use a variety of learning formats (auditory, visual and written)
- Avoid straight lecture & get people involved; use questions, stories, humor
- Keep your language simple and clear; avoid jargon and acronyms

To communicate as effectively as possible,

- Use language that opens doors and empowers people with disabilities; that describes them in terms of their gifts, abilities and talents.
- For any public meetings, put "Sign-language interpreters available upon request" in advertisements. Upon request, provide one.



Q. What is the basic guide for ensuring that all meetings are accessible?

A. To ensure all meetings are accessible, your program/agency needs to create an inclusion offer for all events (not needed for staff meetings or meetings held inter-office where accommodation is already available for the individual). Here is an example inclusion offer that you may want to use:

“Individuals with disabilities can make requests for reasonable accommodations by calling [name of contact] at [telephone] 48 hours in advance. Requests for materials in an alternative format will require a minimum two-week notification period.

Be prepared to deliver alternate formats when requested. Here are some other concrete suggestions for making a meeting accessible:

To make your materials as accessible as possible:

A number of resources can assist employers and employees during all stages of the accommodation process.

- The [Job Accommodation Network \(JAN\)](#) is a free, confidential service from the U.S. Department of Labor’s Office of Disability Employment Policy that provides individualized accommodation solutions. It can be accessed at 1-800-526-7234 (V/TTY).
- The **ADA Technical Assistance Manual** on the employment provisions (Title I) of the ADA is available from the Equal Employment Opportunity Commission (EEOC) by calling 1-800-669-3362 (V) or 1-800-800-3302 (TTY).
- Ten regional [ADA & IT Technical Assistance Centers](#) sponsored by the U.S. Department of Education’s National Institute on Disability and Rehabilitation Research provide ADA information, training and technical assistance across the nation. They can be contacted at 1-800-949-4232 (V/TTY).

Q. When can an employer ask an applicant to “self-identify” as having a disability?

A. Federal contractors and subcontractors who are covered by the affirmative action requirements of section 503 of the Rehabilitation Act of 1973 may invite individuals with disabilities to identify themselves on a job application form or by other

pre-employment examination, to satisfy the section 503 affirmative action requirements. Employers who request such information must observe section 503 requirements regarding the manner in which such information is requested and used, and the procedures for maintaining such information as a separate, confidential record, apart from regular personnel records.

A pre-employment inquiry about a disability is allowed if essential by another Federal law or regulation such as those applicable to disabled veterans and veterans of the Vietnam era. Pre-employment inquiries about disabilities may be necessary under such laws to identify applicants or clients with disabilities in order to provide them with required special services.



Q. How does the ADA's requirement of accessible telecommunications impact us as employers?

A. The ADA requires the establishment of telephone relay services for individuals who use teletypewriters (TTY's, also known as telecommunication devices for deaf persons or TDD's) or similar devices so they can have free-flowing telecommunications with the hearing population. In our state, it is called **Relay Indiana** and it provides full telephone accessibility for people who are deaf, hearing impaired or speech impaired and who use a TTY/TDD. Relay Indiana processes over 1 million calls every year and is available 24 hours a day, 365 days a year. Specially trained Communication Assistants connect the call and remain on the line to assist in the conversation by translating the typed TTY/TDD message into spoken language for the hearing person on the call and by translating the spoken language into a typed TTY/TDD message for the deaf, hearing impaired or speech impaired person on the call. One can access this service from anywhere in Indiana by dialing **711**. Dialing 711 in ANY state will get THAT STATE'S relay system. If you are out of state and want to access Indiana Relay, just dial **1-800-743-3333**.